

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DAKOTA MORRISON,	:	
Plaintiff	:	CIVIL ACTION NO. 1:21-063
v.	:	(JUDGE MANNION)
KILOLO KIJAKAZI, Acting Commissioner of Social Security,¹	:	
Defendant	:	

ORDER

Presently before the court is the report and recommendation of Magistrate Judge Peter E. Ormsby (“Report”), which recommends that the decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff, Dakota Morrison’s (“Morrison”) application for child and adult Supplemental Security Income (“SSI”) benefits, be vacated. (Doc. [24](#)). No objections have been filed to the Report by either party. Upon review of the record in this matter, the Report will be adopted in its entirety, and the decision of the Commissioner will be vacated.

¹ Kilolo Kijakazi became the Commissioner of Social Security effective July 9, 2021, to succeed Andrew Saul. Under [Fed.R.Civ.P. 25\(d\)\(1\)](#) and [42 U.S.C. §405\(g\)](#), Kilolo Kijakazi is automatically substituted as the defendant in this action.

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72\(b\)](#); advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); M.D.Pa. L.R. 72.31.

On May 6, 2020, Morrison was denied child and adult SSI benefits by an administrative law judge (“ALJ”) under Title XVI of the Social Security Act. Morrison appeals the decision, however, arguing that the ALJ erred in finding no medical evidence persuasive, failing to order a consulting medical examination, and finding Morrison’s statements inconsistent with the evidence. (Doc. [19](#) at 11). In considering Morrison’s claims, Judge Ormsby determined that the ALJ’s evaluation was not supported by substantial evidence.

First, Judge Ormsby evaluated the ALJ's analysis of medical opinion evidence and noted that the ALJ, in reaching his decision, rejected the available evidence and did not resolve the conflicting medical opinions. Judge Ormsby thus concluded that "the ALJ's RFC determination is not supported by substantial evidence because it was not informed by any medical opinion and relied instead on his own lay interpretation of the medical evidence, which is 'not within the ambit of the ALJ's expertise.'" (Doc. [24](#) at 39-40) (*quoting* [Kent v Schweiker, 710 F.2d 110, 115 \(3d Cir. 1983\)](#)). Second, Judge Ormsby found that while the ALJ's decision to not order a consulting medical examination was within his discretion given that he took other steps to develop the record, the ALJ had abused his discretion in refusing to proceed with a supplemental hearing to obtain medical expert testimony concerning medical records showing that Morrison was repeatedly hospitalized. *Id.* at 49-50. Judge Ormsby further concluded that the ALJ's decision to cancel the supplemental hearing was prejudicial to Morrison, as doing so precluded evidence which was needed in making an RFC determination. *Id.* at 55. As such, the ALJ's RFC finding lacked substantial evidence.

Accordingly, Judge Ormsby recommends the decision of the Commissioner be vacated and that this case be remanded to the

Commissioner to develop the record fully, conduct a new administrative hearing, and appropriately evaluate the evidence.

The court has reviewed the entire Report of Judge Ormsby and agrees with the sound reasoning, which led him to his recommendation. As such, the court adopts the Report of Judge Ormsby as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Report of Judge Ormsby (Doc. [24](#)) is **ADOPTED IN ITS ENTIRETY**;

(2) The Commissioner's decision denying Morrison SSI benefits is **VACATED**;

(3) This case is **REMANDED** to the Commissioner to develop the record fully, conduct a new administrative hearing, and appropriately evaluate the evidence in accordance with Judge Ormsby's Report.

(4) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: September 27, 2022

21-63-01-ORDER